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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER	
NGUYEN, TU X	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK BLANC

Appeal 2009-004913
Application 09/855,499
Technology Center 2600

Decided: September 11, 2009

Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1, 2, and 4-11. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellant's claimed invention is directed to adjusting the transmission power for base stations transmitting in macro-diversity in a mobile radio-communications system, wherein a reference transmission power for the adjustment is signaled to each of the base stations together with an adjustment period, and wherein each of the base stations periodically adjusts its transmission power to the reference transmission power, at the adjustment period (Spec. 4:1-9). In other words, with the invention there is no need to signal relatively frequently updated values for the reference transmission power; it is necessary only to proceed regularly with adjustments even if they are performed on the most recently signaled value for the reference transmission power, which does not necessarily correspond to an up-to-date value (Spec. 4:10-19).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method of adjusting transmission power for base stations transmitting in macro-diversity in a mobile radio-communications system,

wherein a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and

wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Butovitsch	WO 99/31819	Jun. 24, 1999

The following rejection is before us for review:

The Examiner rejected claims 1-2 and 4-11 under 35 U.S.C. § 103(a) as being unpatentable over the Applicant Admitted Prior Art (APA).

Appellants argue the art rejection of claims 1-2 and 4-11 as a group with independent claim 1 as representative (App. Br. 13-17).[1] Accordingly, claims 2 and 4-11 stand or fall with claim 1. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

OBVIOUSNESS

ISSUE

Appellant asserts that according to claim 1 the reference transmission power is not changed (i.e., not signaled) at each adjustment period (App. Br. 11).

Appellant argues that the APA teaches that it is the reference power that is signaled each time a correction is made and the base stations correct their transmission power based on the received reference power (App. Br. 14; App. Br. 16). Appellant further argues that the synchronizing period indicates an instant

[1] Only arguments made by Appellant have been considered in this decision. Arguments which Appellant could have made but did not make in the Brief have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

when the adjustments are simultaneously performed at the base stations and it is not an adjustment period because claim 2 describes "predetermined instants" at which adjustments are made, and as such, the synchronization time (or instant) cannot be both a predetermined instant and an adjustment period (App. Br. 15). Appellant asserts that the APA simply discloses signaling the synchronization instant and not an adjustment period that is used to perform multiple adjustments (App. Br. 16). In other words, Appellant states that the APA simply discloses providing a single instant for one adjustment and not a value for multiple (periodic) adjustments (App. Br. 15).

The Examiner disagrees with Appellant's interpretation of the reference transmission power as not changed (i.e., not signaled) at each adjustment period, beyond the scope of the claim, because the claim specifically states that "the base station periodically adjusts its transmission power to said reference transmission power" (Ans. 5-6).

The Examiner further finds that the APA teaches that the radio network controller determines initial and new transmit powers and the synchronizing time are provided to the respective base stations (Ans. 6). The Examiner also finds that the serving base station power adjustment is performed gradually with the target base station transmitting at the initial power setting and the serving base stations adjusting their transmission powers toward the new values at the synchronizing time (Ans. 6).

The Examiner reasons that these teachings correspond to the claim subject matter of the base stations adjusting their transmission power at an adjustment period according to the radio network controller instruction (Ans. 6).

Furthermore, the Examiner finds that not only the radio network controller determines an initial new transmit power, the radio network controller periodically (pg. 17, ll. 15-17) signals to the base stations during the diversity handover process, and therefore, the base stations periodically adjust their transmission power according to instructions sent from the radio network controller (Ans. 6).

The Examiner further finds that the APA further teaches that the base station adjusts its transmission power at selected ones of those opportunities or periodically (pg. 16, ll. 20-22) (Ans. 6).

The issue, then, is whether Appellant has shown that the Examiner erred by finding that the APA teaches the limitations of "a reference transmission power . . . signaled to each of said base stations together with an adjustment period" and "each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period" as recited in claim 1.

FINDINGS OF FACT

The following relevant findings of fact (FF) are supported by a preponderance of the evidence:

1. Claim 1 does not recite that the transmission power remains the same at each adjustment period (claim 1).
2. The APA teaches that the initial and new transmit powers and the synchronizing time are provided to the respective base stations (pg. 6, ll. 26-27).

3. The APA teaches that the power adjustment is performed gradually with the base stations adjusting their transmit powers towards the new values at the synchronizing time t_0 (pg. 7, ll. 3-6).
4. The APA teaches that the radio network controller periodically signals to the base stations during the diversity handover process (pg. 17, ll. 15-17).
5. The APA further teaches that the transmitted power can be transmitted periodically or at each adjustment opportunity (pg. 16, ll. 19-22).

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and Appellant has the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

At the outset, we note that Appellant's assertion that the reference transmission power is not changed (i.e., not signaled) at each adjustment period (App. Br. 11), is not commensurate in scope with the claim 1 (FF 1). Nothing in claim 1 requires that the transmission power remains the same at each adjustment period. Although claims are interpreted in light of the specification, limitations

from the specification (i.e., transmission power remains the same at each adjustment period) are not read into the claims. *See Van Geuns*, 988 F.2d at 1184.

The APA teaches that the initial and new transmit powers and the synchronizing time are provided to the respective base stations (FF 2). The APA teaches that the power adjustment is performed gradually with the base stations adjusting their transmit powers towards the new values at the synchronizing time t_0 (FF 3). Thus, we agree with the Examiner's line of reasoning that the claim subject matter of the base stations adjusting their transmission power at an adjustment period (i.e., gradual adjustment towards transmission power at synchronizing time) is met (FF 2-3).

We also remain not persuaded by Appellant's argument regarding the lack of teaching of periodicity and the claim differentiation based on the distinction of periodic adjustment in claim 1 and instant adjustment in claim 2 (App. Br. 14-16). The APA teaches that the radio network controller periodically signals to the base stations during the diversity handover process (FF 4), and therefore, the base stations periodically adjust their transmission power according to instructions sent from the radio network controller. Thus, the APA teaches the periodic feature and the claim limitation of "each of said base stations *periodically* adjusts its transmission power to said reference transmission power, at said adjustment period" (emphasis added) is met as recited in claim 1. The APA further teaches that the transmitted power can be transmitted periodically (i.e., similar to Appellant's claim 1) or at each adjustment opportunity (i.e., similar to Appellant's claim 2) (FF 5). Accordingly, we are not persuaded by Appellant's claim differentiation argument (App. Br. 15).

For the foregoing reasons, Appellants have not persuaded us that the Examiner erred in rejecting claim 1 and claims 2 and 4-11 which fall with claim 1.

CONCLUSION

Under 35 U.S.C. § 103, Appellants have not shown that the Examiner erred by finding that the APA teaches the limitations of "a reference transmission power . . . signaled to each of said base stations together with an adjustment period" and "each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period" as recited in claim 1.

ORDER

The decision of the Examiner to reject claims 1, 2, and 4-11 under 35 U.S.C. § 103, is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W
SUITE 800
WASHINGTON, DC 20037